

INDEPENDENT REVIEW PANEL
COMMITTEE RECOMMENDATION TO THE PANEL

April 24, 2003

Complaint: A 2002.268

Complainant: Estelle Diamond

Aggrieved: Kendale Lakes Villas Homeowners Association

Accused Party: Public Works Department (PW)

Date Complaint Received: September 12, 2002

Materials Reviewed: Grievance Report Form, correspondence, departmental response, staff notes and committee notes

Committee: Heddy Peña, Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant; Timothy Brattain, Conflict Resolution Specialist.

Meeting Date: October 15, 2002

Present: John Ritsema, Construction Division Chief, Public Works Department; Pedro Garcia, Kendale Lakes Villas Homeowners Association President; Estelle Diamond, Complainant and Kendale Lakes Villas Homeowners Association Board Member.

Complaint: Mrs. Diamond was in communication with the County during 2002 regarding the streets in Kendale Lakes Villas, a private community of 108 homes. The Kendale Lakes Villas Homeowners Association (KLVHA) was concerned that utility companies had cut up roads and driveways over the years, but not restored them to prior conditions. Public Works, the Mayor's Office and the County Manager's Office were all involved in the resolution of KLVHA's concerns. Public Works found that the repairs done by the utility companies were within County standards, however road repairs made following Water and Sewer Department repairs were failing. This matter was being addressed through Jose Bacallao in the County Manager's Office, who advised the failing repairs would be corrected. Mr. Bacallao passed away unexpectedly in December 2002 and the repairs were not made.

During her communication with the County, Mrs. Diamond requested copies of permits pulled by utility companies to work in Kendale Lakes Villas. Mrs. Diamond states she was told that Public Works issues permits for this kind of work, however Bill Borgmann told her no permits could be found for her area, or for any "utility work county-wide."

Mrs. Diamond alleges that Public Works does not require utility companies to pull permits, resulting in loss of revenue to the County and unfair advantage to the utility companies. The lack of permits resulted in substandard work done by utility companies in Kendale Lakes Villas because no inspections were conducted.

Departmental Response: The following is quoted from Public Works Director Aristides Rivera's response:

Please be advised that Mrs. Estelle Diamond has been speaking to Mr. Jose Bacallao, Assistant to the County Manager, for the past several months in an attempt to have the County pave private roads which provide access to the parking areas of the Kendale Lakes Villas Homeowners. She claimed that utility companies had not properly patched pavement cuts.

However, a field inspection by Messer's John Ritsema, Chief Construction Division and Bill Borgmann, Chief Public Works inspector, revealed that the pavement patches met County standards with the exception of settlements in the pavement in certain areas above a Water and Sewer Department pipeline. The Water and Sewer Department is in the process of identifying the problem areas and will reimburse the Public Works Department, which will arrange for a contractor to complete the pavement repairs.

Upon completion of the pavement repairs, it will be solely the homeowners responsibility to repave the roads if they desire.

Additionally, Mr. Tony Moreno, Head Permit Section, found records for four Public Works Permits pulled by BellSouth for this area, which were issued in 1999. By law, the Department is only required to keep permit records for three years. At no time did Mr. Borgmann state that 'no permits could be found for her area, or for any "utility work County-wide".'

Committee Remarks: Mr. Ritsema outlined the permit process, providing the costs (minimum \$100) and types of permits available. He stated that all utility companies must pull permits, even on private roads such as those in Kendale Lakes Villas. Permits are recorded on a computer. He referred staff to AO 4-41 for more information on fees.

Mr. Ritsema discussed the need for job sites to be returned to what he termed "acceptable conditions." Panel member Heddy Peña asked how "acceptable conditions" are defined. Mr. Ritsema responded that there are no specific guidelines; "acceptable conditions" are a subjective standard, depending on the inspector. When asked if every job was inspected, Mr. Ritsema responded that he was not sure.

Dr. Diaz clarified the Independent Review Panel's role in the fielding of complaints, stating that the complaint process was the Panel's method of improving service delivery to the public.

Mr. Ritsema stated that his superiors told him to respond to the complaint at hand, and, in his opinion, the IRP was not the forum to discuss general improvements in service.

Mr. Garcia commented that the Association is not trying to force the County to pave its roads, as stated in the Public Works Director's response. The Association is concerned about the quality of roadwork done by utilities because there are no inspections. When the Association asked for permits for Kendale Lakes Villas, Bill Borgmann told them no utility permits could be found. Mr. Garcia stated that when no permits are pulled, no inspections are done, affecting overall quality control. Mr. Garcia further expressed concern about what he termed to be "graffiti;" meaning the spray painted markings left by utility companies.

The complainants stated they had difficulty obtaining direct answers from various departments. Jose Bacallao, Assistant to the County Manager, stated he was unsure of the county's response regarding the county's responsibility for road repairs. Public Works has not provided concrete answers, in spite of communications over a period of six months.

Mr. Ritsema advised that currently there is no fee for telecommunication permits, because the State passed a law that requires telecommunications to give a percent of their gross revenues to the State. The State then passes a portion of the money to the appropriate political jurisdiction. Telecommunication companies are still required to pull permits, however.

The Committee decided to:

1. Ask the Director of Public Works for a report of all permits issued to utility/communication companies in the last three years, by company.
2. Request copies of the four existing permits for Kendale Lakes Villas, including inspection records.
3. Ask the Director of Public Works to articulate in writing what is the "acceptable condition" standard when assessing pavement patches.
4. Ask the Director of Public Works to articulate in writing what is the department and/or county policy for removal of spray paint markings left by utility companies after work is completed.

Staff Remarks: After the meeting Panel staff research revealed that:

1. According to AO 4-41, the minimum fee for the installation or repair of underground utilities is \$125.
2. County Code Sec.2-103.1(a) states: "It shall be unlawful... to construct utilities... without first having obtained a permit from the Public Works Department."
3. County Code Sec.2-103.1(b) states: "Whenever any... legal entity performs any construction... work within an existing right-of-way... the right-of way, including sidewalks, curbs and gutters, must be restored to their preexisting conditions, including any aesthetic enhancements... and any adjacent private property damaged during construction, within 90 days of completion of the construction..."

Departmental Response to Committee: Public Works transmitted the following response to the committee's inquiry:

1. A listing of all permits issued during the three (3) fiscal years ending September 30, 2002, to the following companies: FPL, BellSouth, Miami-Dade Water and Sewer Department, Adelphia Cable, TCI of South Dade, Peoples Gas System, and TCI TKR of South Florida (North Dade).
2. Copies of four (4) permits issued to BellSouth for work in the vicinity of S.W. 137 Avenue and S.W. 68 Street.
3. Pavement patches are accepted by the Department if they conform to the Public Works Manual as set forth in Detail R-2 1. 1. ...
4. There has never been a requirement for the removal of spray paint markings made by utility companies after work is completed. They normally fade as time passes. For approximately the last two (2) years the Department has required the use of water based paints in order to accelerate the fading process. These markings indicate locations of underground utilities and are needed for the safety of workers involved in excavations and to avoid utility damage which would disrupt service to the public.

Committee Findings:

1. The committee recommends that the allegation that Public Works does not require utility companies to pull permits, resulting in loss of revenue to the County and unfair advantage to the utility companies, be NOT SUSTAINED.

Records provided by Public Works indicate thousands of permits were issued to utility companies between 1999 and 2002, therefore the allegation cannot be sustained. However, there is also evidence that utility work was done without permits.

Public Works records document only four permits for the Kendale Lakes Villas area; all issued to BellSouth in May 1999. An FPL letter to Kendale Lakes Villas Homeowners Association President Pedro Garcia, dated April 16, 2002, documents FPL work done in Kendale Lakes Villas:

...we found four jobs were worked in the last three years or so, two were fault repair work only in the green area. A third job entailed no excavation... The fourth job was completed last month or so, and this one have (sic) one asphalt patch due to boring work to replace bad cable. Per inspection with the Utilix Manager and the FPL representative...., the work was done and the one patch is very small and was properly done.

Photographs and statements provided by Mrs. Diamond and Pedro Garcia document utility work being performed in the last 1½ years.

2. The County has lost money due to permits not being obtained.
3. There are specific guidelines for the completion of utility work done in public areas: County Code Sec.2-103.1(b) requires that these areas “be restored to their preexisting conditions.”
4. Public Works did not respond to the IRP committee’s request for inspection records. The committee found no evidence that Public Works routinely conducts inspections when permits are issued.
5. The state Communications Service Tax came into effect October 1, 2001. It gives local authorities the option to charge a permit fee or receive a percentage of the tax. Miami-Dade County chose to receive a percentage of the tax. The law does not exempt telecommunications from obtaining permits.
6. The repairs promised by the County for failing patches above a water pipeline have not been executed.

In an 8/13/02 e-mail to Carol Boersma, Jose Bacallao stated: “Water and Sewer is in the process of preparing the paperwork to have Public Works repair the failing patches at Mrs. Diamond’s development. Public Works has agreed to expedite the repairs as soon as they get the paperwork from Water and Sewer.”

In his 8/30/02 response to the IRP, Public Works Director Rivera stated: “... certain areas above a Water and Sewer Department pipeline [do not meet County standards.] The Water and Sewer Department is in the process of identifying the problem areas and will reimburse the Public Works Department, which will arrange for a contractor to complete the pavement repairs.”

Committee Recommendations to Public Works:

1. Enforce the County Code Sec 2-103 which requires utilities to obtain permits and restore job sites to preexisting conditions.
2. Establish and enforce penalties for failure to obtain permits.
3. Inspect completed jobs for compliance.
4. Post permit and inspection information on the County website.

DISPOSITION OF THE INDEPENDENT REVIEW PANEL

Complainant: Estelle Diamond

Date: May 6, 2003

IRP Case: A 2002.268

From: Eduardo I. Diaz, Ph.D.
Executive Director

The Independent Review Panel met on April 24, 2003 for the purpose of publicly reviewing the complaint made by Estelle Diamond, on behalf of the Kendale Lakes Villas Homeowners Association, against the Miami-Dade Public Works Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Allegations

Mrs. Diamond alleges that Public Works does not require utility companies to pull permits, resulting in loss of revenue to the County and unfair advantage to the utility companies. The lack of permits resulted in substandard work done by utility companies in Kendale Lakes Villas because no inspections were conducted.

B. Disposition of the Independent Review Panel

The Panel found the allegation to be NOT SUSTAINED.

Records provided by Public Works indicate thousands of permits were issued to utility companies between 1999 and 2002, therefore the allegation cannot be sustained. However, there is also evidence that utility work was done without permits.

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Photographs and statements provided by Mrs. Diamond and Pedro Garcia document utility work performed in the last 1½ years.

C. Other Findings

1. The County has lost money due to permits not being obtained.
2. There are specific guidelines for the completion of utility work done in public areas: County Code Sec.2-103.1(b) requires that these areas “be restored to their preexisting conditions.”
3. Public Works did not respond to the IRP committee’s request for inspection records. The Panel found no evidence that Public Works routinely conducts inspections when permits are issued.
4. The state Communications Service Tax came into effect October 1, 2001. It gives local authorities the option to charge a permit fee or receive a percentage of the tax. Miami-Dade County chose to receive a percentage of the tax. The law does not exempt telecommunications from obtaining permits.
5. The repairs promised by the County for failing patches above a water pipeline have not been executed.

In an 8/13/02 e-mail to Carol Boersma, Jose Bacallao stated: “Water and Sewer is in the process of preparing the paperwork to have Public Works repair the failing patches at Mrs. Diamond’s development. Public Works has agreed to expedite the repairs as soon as they get the paperwork from Water and Sewer.”

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D. Recommendations to Public Works

1. Enforce the County Code Sec 2-103 which requires utilities to obtain permits and restore job sites to preexisting conditions.
2. Establish and enforce penalties for failure to obtain permits.
3. Inspect completed jobs for compliance.
4. Post permit and inspection information on the County website, using the Geographic Information System (GIS).
5. Designate a person to research records and respond to citizen requests regarding whether or not a Public Works permit has been pulled for a specific location.

The Independent Review Panel concluded the complaint on April 24, 2003.